

UP Express Wi-Fi Terms of Use

Updated: September 14, 2017

TERMS REGARDING ACCEPTABLE USE, SECURITY AND RISKS OF USE.
READ CAREFULLY, THESE TERMS AND CONDITIONS IMPOSE OBLIGATIONS
AND RESTRICTIONS UPON YOU.

1. General

Welcome to the wireless internet access system on UP Express, a division of Metrolinx, a Crown Agency within the meaning of the Crown Agency Act, R.S.O. 1990 (“UP Express”) trains. The system provides you with access to the Internet via wireless access points (each a “Hotspot”) utilizing one or more of the 802.11a/b/g/n protocols commonly referred to as “Wi-Fi” (the “Service”). These “Terms and Conditions” between you and UP Express set out duties and responsibilities associated with use of the Service. You are solely responsible for all access to and use of the Service including any breach of these Terms and Conditions by you or any user of your device. For the purposes of these Terms and Conditions, “you” means you and every person you authorize to use the Service. By accessing the Service, you acknowledge that you have read, understood and agree to abide by and comply without limitation or qualification, to these Terms and Conditions. If you do not agree with any of these Terms and Conditions, please do not use the Service.

UP Express reserves the right to change, modify, alter or otherwise update these Terms and Conditions, including modification or termination of the Service, or any components thereof, without prior written notice at any time, at UP Express’ sole discretion. UP Express will notify you of any changes to these Terms and Conditions by posting notice of the modified Terms and Conditions on the “Login” or “Intercept” page that is presented to you when you first access the Service (the “Login Page”). Please check these Terms and Conditions periodically for changes. Your continued use of the Service following the posting of any changes to these Terms and Conditions constitutes acceptance of those changes. If you do not agree to any modification of these Terms and Conditions, you agree that you will be unable to use the Service.

2. Acceptable Use Policy

You are responsible for your use of the Services. You shall not use or allow others to use the Service if such use:

- is for, or results in, any illegal, fraudulent, abusive, tortious, annoying or offensive activities, including making available or viewing offensive or otherwise objectionable content, the commission or encouragement of a criminal offence, stalking, harassment, spamming, disrupting or interfering with the Internet, any network, computers, or other devices, transmission of a virus or other harmful

component, defamation, intellectual property infringement, or interference with other users' service;

- attempts to intercept, collect or store data about third parties without their knowledge or consent;
- tampers with or uses non-public areas of the Service;
- attempts to probe, scan or test the vulnerability of any system or network or to breach security or authentication measures;
- consumes excessive network capacity in UP Express' reasonable opinion, or causes its network, or its ability to provide services to others, to be adversely affected;
- is for multi-media streaming, continuous data transmission or broadcasts, automatic data feeds, automated machine to machine connections or peer-to-peer (P2P) file sharing, voice over Internet protocol or any other application that is not made available to you by UP Express which uses excessive network capacity;
- is to provide a substitute or back-up for private lines or dedicated data connections such as DSL;
- is to operate any server system (including email, web, or other kind of server);
- is to forge headers or otherwise manipulate identifiers in order to disguise the origin of any material transmitted through the Service; or
- uses any automatic method to avoid inactivity disconnect or to otherwise maintain a connection unless actively using it.

While using the Service, you may not post, transmit or otherwise distribute information constituting or encouraging conduct that would constitute a criminal offence or give rise to civil liability, or otherwise use the Service in a manner which is contrary to law or would serve to restrict or inhibit any other user from using or enjoying the Service or the Internet.

It is not the intent of UP Express to allow unlimited access to the entire Internet. In providing the Service, UP Express may restrict access to certain sites and communication protocols found to be malicious and inappropriate or suspend or restrict the Service, including your right to access or use the Service if you use it to access pornographic, adult-oriented, hate or spyware matter or websites. You agree and acknowledge the Service provides only limited access to the Internet. You agree to waive any claims that may arise from UP Express' decision to block access to pornographic, adult-oriented, hate or spyware matter and websites through the Service.

You shall not threaten abuse or harass any UP Express employee or representative. You shall not (a) commit, attempt to commit, or allow others to commit or attempt to commit, any fraud against UP Express including fraudulently obtaining Services, (b) transform outbound communications into incoming communications, (c) subvert or attempt to subvert any security devices that UP Express has installed for the Service, or (d) otherwise abuse the Service or allow others to do any of the foregoing. You shall not

resell, transfer, distribute, share or exploit for commercial purposes the Service or any part thereof. You must follow all other service and security regulations issued or adopted by UP Express.

3. Third Party Equipment and Services

You are responsible for the use and compatibility of the Service with any equipment, software, services and/or other materials not provided by UP Express, such as your device (“Third Party Equipment and Services”). The availability and performance of the Service is subject to all memory, storage and other limitations of the device you use to access and use the Service. UP Express disclaims all responsibility for determining compatibility between the Service and any Third Party Provided Equipment and Services.

4. Service Availability

The Service is only available to your device when it is within the range of our Hotspot facilities. UP Express will always try to make the Service available, but it may be interrupted, limited or curtailed due to maintenance and repair work, transmission or equipment limitations/failures, collocation failures or due to an emergency.

5. Performance Levels

The Service is provided on an “as is” and “as available” basis. UP Express does not warrant or guarantee the performance, availability, uninterrupted use or operation of the Service. The entire risk as to the availability, quality and performance of the Service is with you.

You understand that any Content (as defined below) that you may access through the Service may be subject to network management in order to ensure that all users of the Services receive reasonable access to the Services. In addition, UP Express reserves the right to limit or restrict your usage or the speeds at which you receive the Service at its discretion.

Network speed is no indication of the speed at which your device or the Service sends or receives data. Actual network speed will vary based on unit configuration, compression and network congestion. The accuracy and timeliness of data sent or received is not guaranteed and you accept that delays or omissions may occur.

UP Express does not warrant that any particular virtual private network will be compatible with the Service.

6. Security and Privacy

UP Express will not be responsible for any corrupted files or viruses which affect the user of the Service. It is your responsibility to safeguard your system, through appropriate means (e.g. using commercially available software), from theft, unauthorized use or system corruption. You agree to and hereby assume all risks (including, but not limited to, the risks of damage caused by hackers, worms,

Trojans or viruses) arising from, connected to or resulting from your use of the Service. Any detriment caused to the network as a result of your failure to properly secure your system may result in the immediate termination of your access to the Service.

Wireless systems, such as the Service, use radio channels to transmit voice and data communications over a complex network. UP Express does not ensure or guarantee privacy for users of the Service. UP Express does not ensure or guarantee privacy for users of the Service. UP Express, its suppliers and its agents are not liable to you for any lack or invasion of privacy that may occur or be experienced while using the Service. You acknowledge that the Service is not inherently secure and that the wireless communications can be intercepted by equipment and software designed for that purpose. You further acknowledge that in order to work with the widest variety of devices, the Hotspots do not provide any level of encryption (such as WEP, WPA or other encryption and authentication mechanisms). It is strongly recommended that you (and it is your responsibility to) ensure that the configuration of your device is secure.

7. IP Address / Host Name

Any IP address assigned to you by UP Express is the property of UP Express at all times. IP addresses may change each time you access at Hotspot, or any time at the discretion of UP Express without prior notice to you. UP Express assumes no liability whatsoever for any claims, damages, losses or expenses arising out of or otherwise relating to any change in IP Addressing.

8. User Information

Your messages may be the subject of unauthorized third party interception and review. An individual with Internet access can cause damage, incur expenses and enter into contractual obligations while on the Internet. All such matters are your responsibility. UP Express has no obligation to monitor the Service. However, you agree that UP Express reserves the right to monitor the Service electronically from time to time, to block or remove (in whole or in part) any communications and materials transmitted through the Service that we believe may violate applicable law, these Terms and Conditions or a third party's rights or that is otherwise objectionable or offensive, and to disclose any information necessary to satisfy any laws, regulations, legal process or governmental request or as necessary to operate the Service or to protect itself or others.

9. No Liability for Content

The Internet contains content, products or services ("Content") that you may find objectionable or offensive or that may not comply with applicable laws. You understand that UP Express has no control over and accepts no responsibility for any such Content. You assume total responsibility and risk for access to or use of such Content and for use of the Internet. You are solely responsible for evaluating the accuracy, completeness, and usefulness of all Content, and the quality and merchantability, accuracy and

timeliness or delivery of such Content. You are responsible for paying any charges that you may incur from third parties through your use of the Service, and your personal information that may be available to third parties that you access through the Service.

10. EXCLUSION AND DISCLAIMER OF WARRANTIES

THE SERVICE IS PROVIDED BY UP EXPRESS ON AN “AS IS” AND “AS AVAILABLE” BASIS. UP EXPRESS DOES NOT WARRANT THAT THE SERVICE WILL BE AVAILABLE, UNINTERRUPTED, ERROR-FREE, OR FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. UP EXPRESS MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS, WARRANTIES OR CONDITIONS OF ANY KIND WHATSOEVER, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE OR NON-INFRINGEMENT, OR IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH REGARD TO THE SERVICE, OR ANY MERCHANDISE, INFORMATION, CONTENT OR SERVICE PROVIDED ON THE INTERNET AND ALL REPRESENTATIONS, WARRANTIES, OR CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED ARE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, HEREBY EXCLUDED. THESE EXCLUSIONS ARE IN ADDITION TO ANY SPECIFIC EXCLUSION OTHERWISE PROVIDED IN THESE TERMS. YOU ACKNOWLEDGE THAT THERE ARE RISKS, AND ASSUME ALL RESPONSIBILITY RELATED TO, THE SECURITY, PRIVACY AND CONFIDENTIALITY RISKS INHERENT IN WIRELESS COMMUNICATIONS AND TECHNOLOGY. UP EXPRESS DOES NOT MAKE ANY ASSURANCES OR WARRANTIES RELATING TO SUCH RISKS.

11. LIMITATION OF LIABILITY

UP EXPRESS SHALL IN NO EVENT BE LIABLE TO YOU OR TO ANY OTHER PERSON OR ENTITY FOR: (I) ANY DAMAGES, LIABILITIES, CLAIMS, LOSSES, COSTS, EXPENSES OR INJURIES (SUFFERED IN CONNECTION WITH OR IN ANY WAY RELATING TO OR RESULTING FROM YOUR USE OF THE SERVICE OR ACCESS TO THE INTERNET, CONTENT, OR ANY PART THEREOF, OR THAT RESULT FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OR CORRUPTION OF DATA, INFORMATION OR FILES, ERRORS, DEFECTS, DELAYS IN TRANSMISSION, FAILURE OF PERFORMANCE, OR LOSS OR MISDIRECTION OF DATA, INFORMATION OR FILES OR YOUR RELIANCE ON OR USE OF THE INFORMATION, SERVICES OR MERCHANDISE PROVIDED ON OR THROUGH THE SERVICE, OR (II) ANY LOSSES OR EXPENSES (INCLUDING LEGAL FEES) ARISING OUT OF, OR IN CONNECTION WITH ANY ALLEGATION, CLAIM, SUIT OR OTHER PROCEEDING BASED UPON A CONTENTION THAT THE USE OF THE SERVICE BY YOU OR A THIRD PARTY THROUGH YOUR DEVICE INFRINGES THE INTELLECTUAL PROPERTY RIGHTS OR CONTRACTUAL RIGHTS OF ANY THIRD PARTY. UNDER NO CIRCUMSTANCES WHATSOEVER SHALL UP EXPRESS BE LIABLE TO YOU OR ANY OTHER PERSON OR ENTITY FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF BUSINESS, REVENUE, PROFITS, USE, DATA OR ECONOMIC ADVANTAGE), WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), EQUITY, OR OTHERWISE, AND REGARDLESS OF HOW SAME MAY ARISE EVEN IF UP EXPRESS OR ANY OF ITS LAWFUL AGENTS, SUPPLIERS OR EMPLOYEES HAVE BEEN ADVISED OF THE POSSIBILITY OR COULD HAVE FORESEEN SUCH DAMAGES OR CLAIM.

12. INDEMNIFICATION

YOU AGREE THAT YOUR USE OF THE SERVICE SHALL NOT BE MADE THE BASIS FOR ANY CLAIM, SUIT, DEMAND OR CAUSE OF ACTION OR OTHER PROCEEDING AGAINST METROLINX, ITS OFFICERS, DIRECTORS, EMPLOYEES, SUPPLIERS, PARTNERS OR AGENTS. YOU AGREE, AT YOUR OWN EXPENSE, TO INDEMNIFY, DEFEND AND HOLD METROLINX, ITS OFFICERS, DIRECTORS, EMPLOYEES, SUPPLIERS, PARTNERS OR AGENTS HARMLESS AGAINST ANY CLAIM, SUIT, DEMAND, ACTION OR OTHER PROCEEDING BROUGHT OR THREATENED BY A THIRD PARTY AS A RESULT OF (I) THE BREACH OF THESE TERMS AND CONDITIONS BY YOU OR ANY USER OF YOUR DEVICE; AND/OR (II) YOUR OR THEIR USE OF THE SERVICE.

13. Breach of the Terms and Conditions

UP Express may suspend or restrict your right to use and/or access the Service at any time without notice or any other obligation to you, for any reason, including, without limitation, if: (i) the operation or efficiency of the Service is impaired by your use of the

Service; or (ii) you have breached any term or condition of these Terms and Conditions. UP Express shall have no responsibility to notify any third party providers of services, merchandise or information of such termination or suspension. In addition, any use or act that breaches any term or condition of these Terms and Conditions may result in civil or criminal proceedings being commenced against you. UP Express reserves the right, but shall have no obligation, to investigate your use of the Service in order to determine whether a violation of these Terms and Conditions has occurred or to comply with any applicable law, regulation, legal process or governmental request. Any termination of your right to use and/or access the Services shall not relieve you from any liability accruing hereunder prior to the time that such termination becomes effective.

14. Trademarks

Trademarks, logos and service marks (collectively, “Marks”) displayed on the Login Page are the property of UP Express or third parties. The display of these Marks on the Login Page does not imply that a license or right of any kind has been granted. You are not permitted to use or display any of these Marks without the prior written consent of UP Express or the applicable third party. Nothing on the Login Page is to be interpreted as conferring a right to use the Marks or the material protected by applicable Canadian and international copyright laws.

15. Applicable Law

Your use of the Service and these Terms and Conditions shall be governed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada without regard to the conflicts of laws principles thereof. You acknowledge that you have full legal capacity to use the Service in accordance with the foregoing. By using the Service, you acknowledge and agree to submit and attorn to the exclusive jurisdiction of the courts of the Province of Ontario in this respect.

16. Miscellaneous

Failure by UP Express to insist upon or enforce strict performance of any provision of these Terms and Conditions shall not be construed as a waiver of any provision or right. If any of the provisions contained in these Terms and Conditions are determined to be void, invalid or otherwise unenforceable by a court of competent jurisdiction, such determination shall not affect the remaining provisions contained herein. UP Express may assign its rights and obligations under these Terms and Conditions without your prior written consent. You may not assign or transfer these Terms and Conditions.